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Formal Matters

The Examiner has rejected Claims 1-6, 8-9, and 20-22 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-9 of Reissue Application No. 10/066,737. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the article of the application to have as a result of the method used to make the article claims of the '737 application as noted above. U.S. Reissue Application No. 10/066,737 and the instant application are commonly owned by Milliken & Company. A terminal disclaimer is enclosed herewith, which Applicants believe to be sufficient to overcome this rejection.

The Examiner has rejected Claims 1-6, 8-9, and 20-22 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-9 of U.S. Patent No. 6,296,919. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the article of the patent to have as a result of the method used to make the article claims of the '919 patent as noted above. U.S. Patent No. 6,296,919 and the instant application are commonly owned by Milliken & Company. Applicants have learned that such claims are currently the subject of a reissue application; therefore, because the patent has been surrendered, Applicants believe the rejection to be moot. Withdrawal of such rejection is earnestly solicited.

The Examiner has rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-7 of U.S. Patent No. 6,340,514. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the rubber second layer of '514 is a thick solid layer as instantly claimed. U.S. Patent No. 6,340,514 and the instant application are commonly owned by Milliken & Company. On February 18, 2003, Applicants submitted an appropriate terminal disclaimer to overcome such double patenting rejection. Applicants believe such disclaimer will be adequate to overcome this rejection.

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The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 7 and 10 of U.S. Patent Application No. 09/653,785. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '785 application provides a thick skin around the foam layer. It is Applicants' understanding that this application has since become abandoned, thereby rendering this rejection moot.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 7-10 of U.S. Patent Application No. 09/679,467. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '467 application provides a thick skin around the foam layer. U.S. Patent Application No. 09/679,467 and the instant application are commonly owned by Milliken & Company. The '467 application (now granted as U.S. Patent No. 6,589,631) requires two layers of dense rubber in the product. The present application requires only a single layer of dense rubber. For this reason, Applicants believe this rejection to be traversed and request that it be withdrawn.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 7 and 10 of U.S. Patent Application No. 09/672,152. The Examiner contends that, although the claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '152 application provides a thick skin around the foam layer. U.S. Patent Application No. 09/672,152 and the instant application are commonly owned by Milliken & Company. The '152 application requires two layers of dense rubber in the product. The present application requires only a single layer of dense rubber. For this reason, Applicants believe this rejection to be traversed and request that it be withdrawn.

The Examiner has provisionally rejected Claims 1-6, 8-9, 20-22 and 31 under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over Claims 1-2 of U.S. Patent Application No. 09/915,017, in view of Derr (U.S. Patent No. 1,805,038). The Examiner contends that, although the claims are not identical, they are not patentably distinct

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from each other because it would have been obvious to one of ordinary skill in the art to make the projections of the '017 application out of foam in order to provide better cushioning because of the teachings of Derr. U.S. Patent Application No. 09/915,017 and the instant application are commonly owned by Milliken & Company. The '017 application does not include foam rubber as part of the mat construction; rather, it is focused on the woven pattern of protrusions on the back of the mat. Derr teaches deep parallel corrugations or irregularities which form a plurality of spaced arched-like surfaces which constitute the wearing surface of the mat (Col. 1, lines 48+). Applicants submit that there is no suggestion to combine the references and, furthermore, no expectation that Derr's corrugations would be operative if they were positioned on the underside of the mat, as in Applicants' invention. For these reasons, Applicants believe the rejection should be withdrawn.

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RESPONSE**Art Rejections Under 35 USC §103**

Claims 1-3, 5, 8-9, and 31 are rejected under 35 USC 103(a) as being unpatentable over Lindholm (US Patent No. 6,014,779) in view of Dungl (US Patent No. 4,329,981).

Lindholm teaches a rubber mat with projections on both the top and bottom surfaces that is used to massage feet and that has top projections that are less than ½ inch in diameter. Dungl teaches making a mat with projections out of a polyurethane foam with a continuous outer skin in order to provide cushioning for the feet being massaged and to seal the mat against water intrusion. The Examiner has suggested that "it would have been obvious to have made the mat of Lindholm out of a foam with a skin in order to provide cushioning and protection from water because of the teachings of Dungl. Lindholm has a continuous rubber border. Variation in foam rubber composition is taken as being within the ordinary skill in the art. One of ordinary skill would add carpet pile if more abrasive cleaning of the feet was desired."

The Lindholm mat is made of rubber or plastic. (Column 4, line 30) Lindholm does not teach the use of a combination of dense rubber and foam rubber, and does not specifically teach the use of foam rubber with a dense rubber cap.

The Dungl mat is made of "semi-rigid polyurethane integral foam." Dungl defines "integral foam" as a foam that "superficially possesses a more or less compact skin which is smooth towards the outside." (Column 4, lines 19-35) Polyurethane foam does not have the same properties as the foam rubber of Applicants' invention. Polyurethane foam would not be able to withstand the temperatures or pressures associated with vulcanization, which is essential to the formation of the protrusions of Applicants' mat. Polyurethane foams, if vulcanized, would either harden and become inflexible (making them undesirable for a floor mat) or become brittle and disintegrate (also rendering them impractical as flooring articles).

Claim 1 of Applicants' application specifies a vulcanized sheet of foam rubber. It further specifies a sheet of dense rubber that encompasses the foam rubber. Neither Lindholm nor Dungl, either individually or in combination, teaches such a structure. For this reason, Applicants believe the rejection to be improper and request that it be removed.

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Claims 4, 20, 21, and 22 are rejected under 35 USC 103(a) as being unpatentable over Lindholm in view of Dungl as applied to Claims 1-3, 5, 8-9, and 31 above, and further in view of Tsubone et al. (US Patent 4,463,861).

Tsubone et al. teach the use of a skin with a 2 to 160 micron thickness on a foam laminate in order to provide strength but still allow flexibility. The instant invention claims the use of a skin of 40 to 80 microns in thickness. The Examiner has suggested that it would have been obvious to one of ordinary skill in the art to make the skin of Lindholm as modified above in this thickness range in order to provide good strength and flexibility because of the teachings of Tsubone et al.

Applicants have already addressed the failings of the combination of Lindholm and Dungl to teach a foam rubber mat with a dense rubber layer. In light of that failing, Applicants submit that there would be no motivation to consider Tsubone et al. for the thickness of the dense rubber layer. Accordingly, Applicants believe the rejection to be improper and request that it be withdrawn.

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CONCLUSION

Reconsideration of pending Claims 1-6, 8-9, 20-22, and 31 in light of the above remarks is respectfully requested. The issue of Terminal Disclaimers has been addressed. It is believed that the Claims are otherwise in condition for allowance, and such action is hereby earnestly solicited.

Respectfully submitted,

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